

JUDGMENT OF THE COURT (Third Chamber)
6 December 1991 *

In Case C-121/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Kantongerecht (Cantonal Court), Beetsterzwaag for a preliminary ruling in the proceedings pending before that court between

Jeen Lolkes Posthumus

and

Rinze Oosterwoud and

Anne Oosterwoud

on the interpretation of point 2 of the first paragraph of Article 7 of Commission Regulation (EEC) No 1546/88 of 3 June 1988, laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (Official Journal 1988 L 139, p.12),

THE COURT (Third Chamber),

composed of: F. Grévisse, President of the Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges,

* Language of the case: Dutch.

Advocate General: F. G. Jacobs,
Registrar: J. A. Pompe, Assistant Registrar,

after considering the written observations submitted on behalf of:

- the Netherlands Government, by B. R. Bot, Secretary-General at the Ministry of Foreign Affairs, acting as Agent,
- the United Kingdom, by J. E. Collins, of the Treasury Solicitor's Department, acting as Agent,
- the Commission of the European Communities, by its Legal Adviser, R. C. Fischer, acting as Agent,

having regard to the Report for the Hearing,

after hearing the Opinion of the Advocate General at the sitting on 4 July 1991,
gives the following

Judgment

1. By order of 24 April 1990, which was received at the Court Registry on 26 April 1990, the Kantongerecht (Cantonal Court), Beetsterzwaag, Netherlands, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of point 2 of the first paragraph of Article 7 of Commission Regulation (EEC) No 1546/88 of 3 June 1988, laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (Official Journal 1988 L 139, p.12).

- 2 The questions arose in the course of proceedings between Mr Jeen Lolkes Posthumus and Messrs Rinze and Anne Oosterwoud. The defendants operate a stock farm under a lease; they have a reference quantity of 145 430 kg under the additional levy system. On 25 March 1982 Mr Posthumus purchased a parcel of land of approximately 2.4 hectares which belonged to the farm. The Oosterwouds' lease was subsequently terminated with respect to that parcel of land, which was brought into use by Mr Posthumus himself.
- 3 Mr Posthumus brought an action before the Kantongerecht te Beetsterzwaag essentially for an order that Messrs Rinze and Anne Oosterwoud transfer to him the reference quantity applicable to the parcel of land in question or, in the alternative, pay him compensation.
- 4 The Kantongerecht, Beetsterzwaag, considering that the ruling to be given depended on the interpretation of point 2 of the first paragraph of Article 7 of Commission Regulation (EEC) No 1546/88, stayed the proceedings and, pursuant to Article 177 of the EEC Treaty, referred the following questions to the Court for a preliminary ruling:
- '(1) Must point 2 of the first paragraph of Article 7 of Commission Regulation (EEC) No 1546/88, wherein it is provided *inter alia* that where one or several parts of a holding is leased (which must also be understood as meaning where such leasing is terminated) the corresponding reference quantity is to be distributed in proportion to the area used for milk production, be construed as meaning that if the Member State has neither laid down any other objective criteria nor taken any measures under Article 7(4) of Council Regulation (EEC) No 857/84, the dairy farmer who continues to farm his holding but loses the use of some parcels of land as a result of the termination of the lease must, possibly for a consideration, surrender part of the reference quantity in the same proportion which the area to be surrendered bears to the holding's total area, without account having to be taken of the farm buildings (cowsheds) which he owns or leases from a third party?

- (2) Must the objective criteria to be laid down by the Member States be understood as including criteria based on verifiable factual circumstances, such as the existence of buildings, land, labour, machines or such like?'

5 Reference is made to the Report for the Hearing for a fuller account of the facts of the case in the main proceedings, the provisions of Community law in question, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

6 The first question seeks essentially to ascertain whether point 2 of the first paragraph of Article 7 of Regulation No 1546/88 must be interpreted as meaning that, where a Member State has not laid down any other objective criteria, within the meaning of that provision, or implemented Article 7(4) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector (Official Journal 1984 L 90, p. 13), as amended by Council Regulation (EEC) No 590/85 of 26 February 1985 (Official Journal 1985 L 68, p. 1), the reference quantity corresponding to the holding must be distributed, in the event of a transfer of part of the holding, among the operators concerned solely in proportion to the areas used for milk production, or whether other factors may be taken into account, such as buildings which form part of the holding.

7 It should be noted *in limine* that Article 7(1) of Regulation No 857/84, as amended by Council Regulation (EEC) No 590/85 provides that, '[w]here a holding is sold, leased or transferred by inheritance, all or part of the corresponding reference quantity shall be transferred to the purchaser, tenant or heir according to procedures to be determined'. However, under Article 7(4) of that regulation, '[i]n the case of rural leases due to expire, where the lessee is not entitled to an extension of the lease on similar terms, Member States may provide

that all or part of the reference quantity corresponding to the holding which forms the subject of the lease shall be put at the disposal of the departing lessee if he intends to continue milk production’.

- 8 The detailed rules for the application of the above provisions were laid down, in particular, in Article 7 of Regulation No 1546/88, point 2 of the first paragraph of which provides that ‘[w]here one or several parts of a holding is sold, leased or transferred by inheritance, the corresponding reference quantity shall be distributed among the producers operating the holding in proportion to the areas used for milk production or according to other objective criteria laid down by Member States’.

- 9 A comparison of the various language versions of point 2 of the first paragraph of Article 7 of Regulation No 1546/88 shows that Member States are indeed free to lay down different criteria, provided that they are objective concerning the distribution of reference quantities corresponding to holdings only a part of which is the subject of a transfer, but that, where they have made no use of that option or have not implemented Article 7(4) of Regulation No 857/84, that distribution must be effected strictly in proportion to the size of the areas of the respective holding in question which are used for milk production, including those with buildings, without it being possible to take account of the extent to which the various areas have contributed to the total milk production of the holding.

- 10 That interpretation, based on the wording of the provision in question, is in conformity with its purpose. The aim of point 2 of the first paragraph of Article 7 of Regulation 1546/88 is, save in the case of express derogations by Member States, that there should be laid down, in order to ensure both legal certainty and the effectiveness of the system, clear and precise rules the application of which by the national authorities does not presuppose on their part the exercise of any power of discretion.

- 11 For those reasons, the reply to the first question should be that point 2 of the first paragraph of Article 7 of Regulation (EEC) No 1546/88 of 3 June 1988, laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68, must be interpreted as meaning that, where a Member State has not laid down other objective criteria, within the meaning of that provision, or implemented Article 7(4) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector, as amended by Council Regulation (EEC) No 590/85 of 26 February 1985, the reference quantity corresponding to the holding must, in the event of a transfer of part of the holding, be distributed among the operators concerned solely in proportion to the areas used for milk production, and no account may be taken of any other factors such as buildings forming part of the holding.

The second question

- 12 The second question seeks to determine the scope of the concept of 'objective criteria' within the meaning of point 2 of the first paragraph of Article 7 of Regulation 1546/88.
- 13 It should be stated in that regard that the expression 'objective criteria', in the ordinary meaning of those words, considered in their context, refers only to objectively verifiable criteria of general application laid down in advance which are beyond the control of the operators concerned. Such criteria must, as the United Kingdom rightly pointed out, relate to the holding in question or to the agricultural activities carried out on it. It follows that national legislation, such as the Netherlands legislation in question, which primarily makes the determination of the manner in which a reference quantity is to be transferred in the event of a transfer of the holding a matter for agreement between the parties concerned, and which provides only secondarily, in default of such agreement, for a distribution of that quantity by the courts in proportion to the areas used for milk production, cannot be regarded as laying down 'objective criteria'.

- 14 For those reasons, the reply to the second question should be that the concept of 'objective criteria' within the meaning of point 2 of the first paragraph of Article 7 of Commission Regulation (EEC) No 1546/88 refers to objectively verifiable criteria of general application laid down in advance which are beyond the control of the operators concerned and which relate to the properties of the holding involved or of the agricultural activities carried out on it.

Costs

- 15 The costs incurred by the Netherlands Government and the United Kingdom Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Kantongerecht te Beetsterzwaag by order of 24 April 1990, hereby rules:

1. Point 2 of the first paragraph of Article 7 of Commission Regulation (EEC) No 1546/88 of 3 June 1988 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 is to be interpreted as meaning that when a Member State has neither laid down any other objective criteria within the meaning of that provision nor implemented Article 7(4) of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector, as amended

by Council Regulation (EEC) No 590/85 of 26 February 1985, then when part of a holding is transferred the corresponding reference quantity is to be distributed among the operators concerned solely in proportion to the areas used for milk production, and no account may be taken of any other factors such as buildings forming part of the holding;

2. The concept of 'objective criteria' within the meaning of point 2 of the first paragraph of Article 7 of Commission Regulation (EEC) No 1546/88, cited above, refers to objectively verifiable criteria of general application laid down in advance which are beyond the control of the operators concerned and which relate to the properties of the holding involved or of the agricultural activities carried out on it.

Grévisse

Moitinho de Almeida

Zuleeg

Delivered in open court in Luxembourg on 6 December 1991.

J. A. Pompe
Registrar

F. Grévisse
President of the Third Chamber